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CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 716

JAMES J. CLAYTON,

Petitioner,

vs

THE STATE OF ALABAMA

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA AND BRIEF IN SUPPORT THEREOF.

JOHN C. WALTERS,
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INDEX

Subject Index

	Page
Petition for writ of certiorari	1
Statement of the case	1
Brief in support of petition	5
Statement of jurisdiction	5
Statement of facts	6
Assignment of error	7
Argument	7

Sections of the U. S. Constitution cited:
14 Amendment, Section 1; "Nor shall any State deprive any person of life, liberty, or property, without due process of law"

Opinions of the Courts Below

Clayton v. *State*, 4th Division 836, April 17th, 1935
Clayton v. *State*, 4th Division 836, May 15, 1945

(Above decision by Court of Appeals of Alabama and not reported in Reporters, still in manuscript.)
Ex Parte James J. Clayton, 4th Division 376, June 14th, 1945
Ex Parte James J. Clayton, 4th Division 376, October 11, 1945

(Above decision in Supreme Court of Alabama, and not reported in Reporters; still in manuscript.)
(No opinion was rendered on October 11th, 1945, rehearing denied without opinion.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 716

JAMES J. CLAYTON,

Petitioner,

vs.

THE STATE OF ALABAMA

APPLICATION FOR CERTIORARI TO THE SUPREME COURT OF ALABAMA

To the Honorable Supreme Court of the United States:

Your petitioner, James J. Clayton, would respectfully show unto the court the following:

1. That he is a citizen of the United States of America and his residence is within the State of Alabama.

Your petitioner would further show that he was convicted in the Circuit Court of Dale County, Alabama, on August 23rd, 1943, of the crime of arson, and duly sentenced to the penitentiary of Alabama. Your petitioner duly appealed said cause to the Court of Appeals of Alabama and said judgment was affirmed on April 17th, 1945; your petitioner filed an application for rehearing in said Court of Appeals of Alabama on April 24th, 1945, and the same was

denied on May 15th, 1945, by said court; your petitioner filed an application for writ of certiorari with the Supreme Court of Alabama for certiorari to review the said judgment of the Court of Appeals of Alabama, the same having been filed May 29th, 1945, and denied by the said Supreme Court of Alabama on June 14th, 1945; application for rehearing was filed in the Supreme Court of Alabama, on June 27th, 1945, and finally denied October 11th, 1945. Your petitioner has, therefore, exhausted all remedies in the State Courts of Alabama, and the decision by the Supreme Court of Alabama on October 11th, 1945, was a final decision by the highest court in the State of Alabama.

Your petitioner was convicted of burning an automobile belonging to a Mr. Pratt, a white man. Your petitioner was employed by Pratt as a shoe repair man. The State insisted that the automobile was burned for insurance, but, as a precaution, there was a general arson count in the indictment, together with an arson for insurance count. The State utterly failed to prove that there was any insurance. Mr. Pratt, the white man, who was indicted at the same time, has never been tried. Your petitioner insists that his conviction could have never been obtained except by the confessions shown in this record. Your petitioner testified, as shown on pages 20 through 26 of the transcript, that his confessions were obtained by beatings, threats, and prolonged examination. The State's witnesses, in part, substantiated that the confessions had been obtained by beatings and threats.

Zack Norris, a State Highway Patrolman, as shown on page 14 of the transcrip, testified, "Mr. Wilkinson, a deputy sheriff, did not whip the negro, but slapped the negro after he practically made the statement • • • he was slapped before he confessed the statement." As shown on page 15 of the transcript, Norris further testified that the

interrogation took place from, "that morning" until "late afternoon". His further testimony on page 15 of the transcript corroborates that your petitioner was beaten and slapped.

B. F. Craven, another witness for the State, as shown on pages 18 and 19 of the transcript, in part, admits that your petitioner was whipped.

Your petitioner testified on page 21 of the transcript that he was beaten to such an extent that blood ran all over his shirt. On page 21 of the transcript, it is shown that the sheriff answered, at the time of the trial, that the shirt had been cleaned up and was not available. Your petitioner would respectfully show that the confessions shown throughout this transcript were obtained by force, threats, beatings, and a prolonged and unusual examination.

2. Your petitioner would respectfully show unto the court that this Honorable Court has jurisdiction of this cause under Section 1, Amendment 14, to the Constitution of the United States, wherein your petitioner is guaranteed that, "Nor shall any State deprive any person of life, liberty, or property, without due process of law." Your petitioner would respectfully show that the confessions in this case, and the conviction which resulted, were in flagrant violation of his rights and privileges as a citizen of the United States under said 14th Amendment.

WHEREFORE, your petitioner would respectfully pray unto this Honorable Court that this Court take jurisdiction of this cause, under the terms of the 14th Amendment, as hereinabove stated, and that said judgment of the Supreme Court of Alabama, or judgment or said State Courts, as herein shown, be set aside, and reversed and the cause remanded for a new trial; your petitioner further prays that if he is mistaken in the relief for which he asks herein

that he may be granted such other and additional relief as he may be entitled under the premises; your petitioner would further pray that until the final determination of this cause by this Honorable Court that this Honorable Court, or Justice to whom this cause is assigned, issue a stay order to the Supreme Court of Alabama, staying the judgment in this cause and the operation thereof, until this cause be finally determined by the Honorable Supreme Court of the United States.

Your petitioner submits himself to this Honorable Court's jurisdiction for such relief as he may be entitled under the premises.

Submitted this 4th day of January, 1946.

JOHN C. WALTERS,
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 716

JAMES J. CLAYTON,

Petitioner,

vs.

THE STATE OF ALABAMA

BRIEF IN SUPPORT OF PETITION

Petitioner in this cause would respectfully show that the Honorable Supreme Court of the United States has jurisdiction of this cause under the 14th Amendment of the Constitution of the United States, Section 1, which reads, "Nor shall any State deprive any person of life, liberty, or property, without due process of law." Petitioner contends that the confessions, as shown by this record, were induced and caused by beatings, slaps, threats, and prolonged examination, and, therefore, said confessions were obtained in flagrant violation of said 14th Amendment to the Constitution of the United States. Petitioner is a citizen of the State of Alabama and was convicted of the crime of arson in Dale County, Alabama, on August 23rd, 1943; said case was duly appealed to the Court of Appeals of Alabama, and which

said court affirmed the case on April 17th, 1945; petitioner applied for rehearing in said court on April 24th, 1945, and the same was denied on May 15th, 1945. Petitioner filed an application for certiorari with the Supreme Court of Alabama asking that said Supreme Court review the action of the Court of Appeals, the same being filed May 29th, 1945, and denied June 14th, 1945; application for rehearing was filed in the Supreme Court of Alabama on June 27th, 1945, and denied October 11th, 1945. Petitioner has, therefore, exhausted, finally, all remedies with the State Courts of Alabama, the same being finally exhausted when the Supreme Court of Alabama denied rehearing on October 11th, 1945.

Statement of Facts

Petitioner was indicted for arson, the burning of an automobile in Dale County, Alabama, the property of one Mr. Pratt, the employer of petitioner. Pratt, a white man, was indicted at the same time petitioner was indicted. He has never been tried. The State proceeded on the theory that the car was burned by petitioner to collect insurance for Pratt, but the State utterly failed to prove that there was any insurance. Therefore, petitioner stands convicted of a crime which he could have no possible motive or purpose to commit, and which resulted because there happened to be a general arson count in the indictment.

Petitioner's conviction depends largely upon the confessions shown in this record. Petitioner would respectfully shown, as shown by his own testimony on page 20 through 26 of the transcript, that he was beaten with a black jack, slapped, threatened, and questioned during an entire day; as a result, the confessions were made. The State witness, Zack Norris, a highway patrolman, as shown on pages 13 and 15 of the transcript, and B. F. Craven, as shown on pages 18 and 19 of the transcript, in part,

corroborates petitioner's statement as to the beatings, slappings, threats, and questionings. It is further corroborated by the sheriff's answer in open court, as shown on page 18 of the transcript, that the sheriff had cleaned the bloody shirt belonging to petitioner. Under this statement of facts, petitioner respectfully submits that his rights under the 14th Amendment to the Constitution of the United States, have been flagrantly violated.

Assignment of Error

I. The Supreme Court of Alabama erred in not reviewing the Court of Appeals of Alabama, and for failure to grant petitioner a new trial because of the confessions as shown by this record; the same having been obtained by beatings, slappings, threats, and prolonged examination. The record affirmatively shows that Motion for exclusion was duly made to the Trial Court on such grounds, and the same was duly raised in the Court of Appeals of Alabama and in the Supreme Court of Alabama.

Argument

Petitioner respectfully submits that the facts as shown by the State's own witnesses are the best argument for reversal of this case. Attention is respectfully called to the following:

Zack Norris, the highway patrolman, said:

> "I later saw the defendant and he made a statement to me. I did not nor did anyone else make any threats against the negro, offer him any reward or abuse or mistreat him in any way. *Mr. Wilkinson*, a deputy sheriff did not whip the negro, *but slapped the negro after he practically* made the statement. That was all that was done to him. He was impudent * * * He made a statement and it was reduced to writing. *He was slapped before he completed* the statement." (Transcript page 14.)

"Mr. Wilkinson and myself took the negro in charge *that morning.* Others came up *later in the day.* Others were present and he made his statement in the *late afternoon. It was late in the afternoon when he was slapped.* He was in jail. *Mr. Wilkinson didn't talk to him at all.* He was slapped down at the sheriff's office where we had him. Wilkinson slapped him down at the sheriff's office. He made a statement at the sheriff's office. He was both at the sheriff's office and at the jail that day. *We put him back in jail after he was slapped.* It was the next day in jail that we talked to him again. After the conversation in jail *and after we had him in the sheriff's office we* were not satisfied with his statement and went back and talked to him the next day."

"• • • after we had the conversation with him about Mr. Pratt and what he said, we had another conversation with him because *we wanted to see if he wouldn't admit that he* burned it."

"We didn't slap him because he wouldn't admit it. He told us previous that he hadn't burned it, and we went back to see if he wouldn't say he didn't burn it. *Mr. Wilkinson did not slap him when the negro was with me.* He denies all time he burned the car. • • • We had two or three conversations with the negro. I don't know whether it was four or five or not." (All above transcript page 15.)

(Emphasis added throughout where underscored.)

It is clearer to analyze each statement in their order. Norris presents a sordid situation. His evasiveness can leave no one unconvinced that this helpless negro was slapped into making a satisfying statement to these officers when they "were not satisfied with his statement" when he "denies that he burned the car", as Norris put it, "we wanted to see if he wouldn't admit that he burned it."

From "that morning" to "late afternoon" the negro steadfastly denied any guilt. He was then "slapped" because he was "impudent", they say.

Impudent to whom? * * * they do not say. They do not testify as to anything he said or did. All he said, at first, was that he was innocent. After that long day, after being "slapped", they got their statement. Was that "impudence"?

Wilkinson slapped him. Was he impudent to Wilkinson, * * * No, Norris testifies that "Mr. Wilkinson didn't talk to him at all."

The picture is easy. After a long day of questioning by the officers, Wilkinson, who had said nothing, got the results that questions couldn't get; he "slapped" the negro and a confession was forthcoming.

Norris says that the statement was practically made or was in the making, when the "slap" resounded. Maybe the confession was not then at the point where they "were satisfied", they hurried it. But if any part was induced by the "slap" I do not believe this Court will countenance it.

Norris, however, concluded by saying, "Mr. Wilkinson did not slap him when the negro was with me." This, after having told in detail just what had taken place.

Ray Peters, Policeman of the City of Ozark, testified next:

> "He denied everything in jail except having the car in his possession * * * We took him from the jail to the sheriff's office. Wilkinson could have slapped him but he didn't do it in my presence and I don't know that he slapped him. In my presence they didn't do anything to him that I saw, I don't know what was done when I wasn't looking." (Transcript pages 16 and 17.)

B. F. Craven, next testified, for the State:

> "I saw this defendant and had two conversations with him. The first one was in the sheriff's office. The next one was in the jail. It was after supper that we talked to him at the sheriff's office * * * at that time no one threatened him and no one offered him any

reward or inducement to make a statement and *no one slapped him.. After we got down in the sheriff's office, Mr. Wilkinson did slap him after he kept talking back to him. Mr. Wilkinson told him nobody was mad with him.*

"This was at least 30 minutes after he made the statement. I told him I only wanted him to tell the truth * * * he denied anything about the fire." (Transcript page 18.)

"Mr. Wilkinson slapped the negro when we first got down to the sheriff's office. I hadn't even talked to the negro at that time." (Transcript page 19.)

Craven completely contradicts himself. He last said that the slapping was "when we first got down to the sheriff's office." He first said the slapping was "30 minutes after he made the statement," yet, the statement was made, without dispute, at the sheriff's office on that one occasion.

Craven "hadn't even talked to the negro" when Wilkinson slapped him; the confession could not have been made before the slapping under those circumstances, for Craven testified about talking with the negro and the negro making the confession.

We do not believe that this Court will permit a confession to convict a man under those circumstances.

Craven is contradicted by Norris, who says "but slapped the negro after he practically made the statement * * * he was slapped before he completed the statement."

Norris said Wilkinson had nothing to say. Just slapped the negro. Craven said Wilkinson talked to him, told him "nobody was mad."

Clarence Weeks, the sheriff, testified:

"I was present when he made a statement to Mr. Craven. I did not knock him down or bloodly his shirt. Nobody hit him with a black jack. Mr. Norris did not interfere

in any way. No one whipped the negro *and no one slapped him.* Norris was there. I was not there and never met the negro there. There were four, five, or six of us. When they took the negro in there to question him, they asked me to come in. No one knocked the negro down."

Can this confession be upheld, merely because of this sheriff's statement, contradicted by everyone else, if decisions by the United States Supreme Court under the 14th Amendment are adhered to? • • •

The defendant vigorously denied any guilt. He was a shoe repair man. He had worked at Ft. Benning, and was working at Camp Rucker when the fire occurred. He had been repairing a shoe repair machine. He had cleaned the machine with kerosene, and the can was left in the car. On the night the car burned he had a flat, and had to leave the car by the road. He took off the best tires and brought them to his room. This, we submit, in this time of tire shortage, is what anyone else would have done.

The tires were found in his room • • • but what of it? He admitted all this freely. He did what any other man would have done now.

Clayton testified about the confessions: He said:

"That afternoon, Mr. Wilkinson and the A. B. C. man came into the jail and Mr. Wilkinson threatened to beat me up. Mr. Wilkinson hit me with a black jack up there and then they brought me downstairs and I said to them 'You can beat me as much as you want to, I am not going to tell a lie'. I said I was working for Mr. Pratt just like I would work for you. I said I did what he told me to do and then the A. B. C. man slapped me. He slapped me a couple of times and Mr. Norris made him stop whipping me. Mr. Weeks slapped me down. Mr. Wilkinson hit me twice with a black jack. The other men were mean to me. *I bled over my shirt at the jail. If I had the shirt here I could show it to you.*"

"Mr. Lee (quoting transcript page 21) called for the shirt *and the sheriff answered that the shirt had been cleaned up as the negro had been out of jail for* months."

Notice, the sheriff answered that "the shirt had been cleaned up" * * * cleaned up for what reason?

Why should the sheriff clean the shirt? There is no law in Alabama requiring a sheriff to launder clothes for the prisoners in his jail.

Cleaned up for what reason? * * * Clayton gave the reason.

We submit that this is a clear case of a negro being whipped, beaten, and slapped into making a confession of a crime he did not commit, and had no reason to commit.

Respectfully submitted,

JOHN C. WALTERS,
Counsel for Petitioner.

(21)

JAN 28 1946
CHARLES ELMORE CROPLEY
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

NO. 716

JAMES J. CLAYTON,
Petitioner

V.

THE STATE OF ALABAMA,
Respondent

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

BRIEF FOR RESPONDENT

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On The Brief.

INDEX

SUBJECT INDEX

	Page
Opinions of the Court below	1
Jurisdiction	2
Issue	2
Statement of the Case	2
Argument	7
The petitioner was not deprived of his liberty without due process of law by the admission into evidence of his confession or admission	7
1. There was a satisfactory showing that the admission was voluntary	8, 10
2. A confession or admission is not involuntary when physical abuse has no causal relation to the confession or when such abuse is subsequent in point of time thereto	9, 12

Page

3. When an admission is not the sole or even the principal evidence in the case, and there is a satisfactory showing that the admission was voluntary, the determination of the triers of fact should be sustained, 'unless such determination is so lacking in support in the evidence that to give effect would work that fundamental unfairness which is at war with due process 9, 15

Certificate 19

TABLE OF CASES CITED

Page

Andrews v. People
33 Colo. 193, 108 Am. St. Rep. 76, 79
Pac. 1031 ..... 9, 14

Ashcraft v. Tennessee,
322 U. S. 143, 88 L. Ed. 1192 8

Beckham v. State,
100 Ala. 15, 14 So. 859 ..... 8, 11, 13, 14

Bell v. State,
177 Ark. 1034, 9 S. W. 238 ..... 9, 15

Brown v. Mississippi,
297 U. S. 278, 56 S. Ct. 461,
80 L. Ed. 682 ..... 8, 9, 15

Chambers v. Florida,
309 U. S. 227, 84 L. Ed. 716 ..... 8, 9, 16

Connors v. State,
95 Wis. 77, 69 N. W. 981 ..... 9, 14

Daniels v. State,
243 Ala. 675, 11 So. 2d, 756, 761 ..... 8, 11

Page

Lind v. State,
137 Ark. 92, 207 S. W. 47 ..... 9, 15

Lisbenda v. California,
314 U. S. 219, 86 L. Ed. 166 ..... 10, 17, 18

Redd v. State,
69 Ala. 255 ..... 8, 10, 11

Reedy v. State,
246 Ala. 363, 20 So. 1d, 528, 532 ..... 8, 13, 15

Thomas v. State,
58 Fla. 122, 51 So. 410 ..... 9, 14

Vernon v. State,
239 Ala. 593, 196 So. 96; 8, 11

Ward v. Texas,
316 U. S. 547, 96 L. Ed. 1663 ..... 8, 10, 16

24 *A. L. R.*, page 712 ..... 9, 13

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1945
NO. 716

JAMES J. CLAYTON,
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V.

THE STATE OF ALABAMA,
Respondent

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI BRIEF AND ARGUMENT FOR RESPONDENT

I.

OPINIONS OF THE COURTS BELOW

The opinion of the Court of Appeals of Alabama is reported as follows: *Clayton v. State*, 4th Div. 836, 23, So. 2d. 396; *Clayton v. State*, 4th Div. 836, May 15, 1945, opinion extended, application for rehearing overruled, 23 So. 2d. 396.

Petition for writ of certiorari in the Supreme court of Alabama was denied, *Ex Parte James J. Clayton*, 4th Div. 376, June 14, 1945, 23 So. 2d. 397. An application for rehearing in the Supreme Court of Alabama was overruled without opinion, *Ex Parte James J. Clayton*, 4th Div. 376, October 11, 1945, 23 So. 2d. 397.

II

JURISDICTION

The petitioner has applied for a writ of certiorari from the Supreme Court of the United States to review the judgment of the Court of Appeals of Alabama, rendered on April 17, 1945, rehearing denied May 15, 1945, under the provisions of Section 237 (b) of the United States Judicial Code (28 USCA, § 344).

ISSUE

The only question presented by the petitioner is whether or not he was deprived of his liberty without due process of law in that the State used as evidence an admission allegedly procured by intimidation.

III

STATEMENT OF THE CASE

The petitioner was indicted for the offense of arson in Dale County, Alabama (R. 1). He was tried by a jury, found guilty and sentenced to imprisonment in the penitentiary for a period of two years (R. 31).

The testimony introduced in behalf of the State tended to show that James J. Clayton, a negro, was

seen by a police officer at or about 5 o'clock on the morning that an automobile was burned (R. 10). The petitioner was walking toward the automobile at the time, and when last seen was about one hundred yards from the car. Within about fifteen minutes the witness who observed the petitioner approaching the car returned to the automobile and found it in flames (R. 10).

Previous to the burning this same witness had seen a gallon jug of kerosene in the automobile, in a brown glass jug. The right front wheel of the automobile had no tire on it, and the rest of the wheels had old tires all of which were flat. (R. 12).

The State further introduced expert testimony tending to show that the interior of the automobile probably would not burn unless accelerated by some fuel, and that it was improbable that the battery or electrical system of the automobile could cause a fire. (R. 12, 13.) It was further established by the State that the petitioner bought a gallon of kerosene on the day preceding the fire. (R. 13.)

We now come to that part of the testimony where the State showed a statement or admission made by the petitioner. Zack Morris, witness for the State, who was a highway patrolman, after testifying that the tires on the automobile did not fit the tracks made when the automobile left the road, stated that the defendant made a statement to him. He further testifies:

"I did not, nor did anyone else, make any threats against the negro, offer him any reard, or abuse or mistreat him in any way.

"Mr. Wilkerson, a deputy sheriff, did not whip the negro, but slapped the negro after he practically made the statement. That was all that was done to him. He was impudent."

The court then allowed the witness to testify as to what statement petitioner had made. In substance, according to this witness' testimony, the statement was that the owner of the automobile, Mr. Pratt, had sent petitioner on an errand in the automobile, had told him that when he had completed the errand that petitioner should park the car on the outskirts of Ozark, Alabama, and take the tires off and if there was any kerosene left to leave it in the car. The statement further included the fact that the owner of the automobile, Pratt, told petitioner that he could have some of the tires. (R. 14).

On cross-examination, this witness testified that the statement was made in the late afternoon following the arrest of petitioner that morning and that he was slapped in the sheriff's office by Mr. Wilkerson, a deputy sheriff. His testimony further shows that the petitioner was put back in jail. The petitioner never admitted or confessed to the burning of the car. In substance the statement was: 1. He was using the car with the owner's consent, 2, that the owner had told him to leave the car out on

the side of the highway, 3, that the owner had told him to take the tires off the car, 4, that the owner had promised petitioner that he could have some of the tires, 5, that petitioner was told by the owner to leave the kerosene in the car. (R. 14, 15.)

The testimony further showed that the officer went to where the petitioner lived and found the tires as the petitioner had stated. (R. 16.)

The testimony of Roy Peters was substantially the same as that of Zack Morris (R. 16 and 17.) This witness who was present at the time the statement was made testified that no one mistreated the petitioner and no one offered him any reward and no one told him that it would be better to make a statement or do anything else. (R. 17.) Although this witness was present he does not recall that the petitioner was slapped. (R. 17.)

The State's witness, B. F. Craven, (R. 18) who was also present at the time the statement was made, testified that no one mistreated the petitioner, that the petitioner was not threatened or offered a reward to make the statement. This witness did testify, however, that the petitioner was slapped by Mr. Wilkinson, the deputy sheriff, some thirty minutes after the statement had been made. (R. 18.)

The testimony introduced in behalf of the petitioner tended to show that the petitioner left Ozark, Alabama, in the automobile of Mr. Pratt, that his

destination was Opelika, Alabama. He testified that he purchased the kerosene in order to clean a shoe repair machine, which belonged to Mr. Pratt. The petitioner further testified that shortly after leaving Ozark, he had trouble, and turned around and started back to Ozark; that one of his front tires went flat and he had to pull off the road. The petitioner then testified that he found some old tires in the back of the car and put them on the wheels and took the tires that were originally on the automobile to his room. The petitioner then introduced his defense of alibi by stating that he stayed in his room from approximately eleven on the night preceding the fire until the next morning about 5:30, after the fire (R. 20, 21.)

This testimony is corroborated by the witness Grady Ryals (R. 26.)

Rather than go into detail in petitioner's testimony as to how he was mistreated it is sufficient to say that he testified that all of the officers and persons present at the time he admitted his statement mistreated him, beat him, whipped him, and threatened him; that they did this at the jail and in the sheriff's office. (R. 21.)

Summarizing petitioner's own testimony, which can be compared to his statement as testified to by state's witness, the petitioner said: 1. That he was in possession of the car that was burned. 2. That Mr. Pratt had told him to get a gallon of kerosene,

but that it was purchased for the purpose of cleaning a machine. 3. That Mr. Pratt had told him to leave the kerosene in the automobile. 4. That Mr. Pratt, the owner of the automobile, had told petitioner that if he had any trouble with the automobile to leave it by the side of the road, and 5. That if he had to leave the automobile by the side of the road to remove the tires. (R. 20, 21).

In rebuttal several witnesses for the State, who were present at the time petitioner made his statement, testified that the petitioner was not mistreated in any way. (R. 26 and 27.)

IV

ARGUMENT

THE PETITIONER WAS NOT DEPRIVED OF HIS LIBERTY WITHOUT DUE PROCESS OF LAW BY THE ADMISSION INTO EVIDENCE OF HIS CONFESSION OR ADMISSION.

It is the purpose of respondent's brief and argument to show to the court that the use by the State of the admission made by the petitioner cannot be said to have deprived the petitioner of a fair hearing or a fair trial as guaranteed to him by the Fourteenth Amendment. We shall demonstrate that the use of the statement of petitioner in his trial did not amount to a deprivation of liberty without due pro-

cess of law within the meaning of the principles announced by this Court in the decisions of *Brown v. Mississippi*, 297 U. S. 278, 56 S. Ct. 461, 80 L. Ed. 682; *Chambers v. Florida*, 309 U. S. 227, 84 L. Ed. 716; *Ward v. Texas*, 316 U. S.547, 86 L. Ed. 1663, *Ashcraft v. Tennessee*, 322 U. S. 143, 88 L. Ed. 1192.

1. THERE WAS A SATISFACTORY SHOWING THAT THE ADMISSION WAS VOLUNTARY.

Redd v. State, 69 Ala. 255;

Daniels v. State, 243 Ala. 675, 11 So. 2d. 756, 761;

Vernon v. State, 239 Ala. 593, 196 So. 96;

Beckham v. State, 100 Ala. 15, 14 So. 859.

2. A CONFESSION OR ADMISSION IS NOT INVOLUNTARY WHEN PHYSICAL ABUSE HAS NO CAUSAL RELATION TO THE CONFESSION OR WHEN SUCH ABUSE IS SUBSEQUENT IN POINT OF TIME THERETO.

Beckham v. State, 100 Ala. 15, 14 So. 859, 860;

Reedy v. State, 246 Ala. 363, 20 So. 2d. 528, 532;

Connors v. State, 95 Wis. 77, 69 N. W. 981;

Thomas v. State, 58 Fla. 122, 51 So. 410;

Andrews v. People, 33 Colo. 193, 108 Am. St. Rep. 76, 79 Pac. 1031;

Lind v. State, 137 Ark. 92, 207 S. W. 47;

Bell v. State, 177 Ark. 1034, 9 S. W. 238;

24 *A. L. R.*, page 712.

3. WHEN AN ADMISSION IS NOT THE SOLE OR EVEN THE PRINCIPAL EVIDENCE IN THE CASE, AND THERE IS A SATISFACTORY SHOWING THAT THE ADMISSION WAS VOLUNTARY, THE DETERMINATION OF THE TRIERS OF FACT SHOULD BE SUSTAINED, UNLESS SUCH DETERMINATION IS SO LACKING IN SUPPORT IN THE EVIDENCE THAT TO GIVE IT EFFECT WOULD WORK THAT FUNDAMENTAL UNFAIRNESS WHICH IS AT WAR WITH DUE PROCESS.

Brown v. Mississippi, 297 U. S. 278, 56 S. Ct. 461, 80 L. Ed. 682;

Chambers v. Florida, 309 U. S. 227, 60 S. Ct. 472, 84 L. Ed. 716;

Ward v. Texas, 316 U. S. 547, 86 L. Ed. 1663;
Lisbenda v. California, 314 U. S. 219, 86 L. Ed. 166.

1. There was a satisfactory showing that the admission was voluntary.

At the outset it should be stated that the statement made by the petitioner and used against him on trial was not a confession, but was at most an admission in the nature of a confession tending to connect him with the crime of arson. The petitioner never admitted having burned the automobile or participating in the burning. These facts of necessity were established by evidence independent of his statements. It must be remembered that the petitioner in his admission merely stated that he was told to leave the car out on the highway and that he could remove the tires and have part of them. When this testimony was offered by the State the proper predicate under the Alabama Law was laid. Zack Morris testified that no threats were made to the petitioner nor was he mistreated nor were any rewards or inducements held out to the petitioner. Other State's witnesses also testified to substantially the same facts and therefore laid the predicate for the admission of petitioner's statement. The trial judge, therefore, was authorized under the Alabama law to admit the statement in evidence after a satisfactory showing that it was voluntary. *Redd v. State*, 69 Ala. 255.

It then became the duty of the jury to determine the weight and credibility of the statement, taking into consideration the evidence introduced by the petitioner that the statement was induced by threats and violence. *Redd v. State*, 69 Ala. 255; *Daniels v. State*, 243 Ala. 675, 11 So. 2d. 756, 761; *Vernon v. State*, 239 Ala. 593, 196 So. 96; *Beckham v. State*, 100 Ala. 15, 14 So. 859.

In the latter case it was stated by the Alabama Court:

> "All confessions are prima facie involuntary and they can be rendered admissible only by showing that they were voluntary and not constrained, and this should be made satisfactorily to appear."

It is contended, therefore, that even applying the more strict rules relating to confessions the admission of the petitioner was properly admitted into evidence in the Alabama trial court since several of the State's witnesses unmistakably testified that at the time the statement was made the petitioner was not threatened, was not abused and was not mistreated in any way.

In passing upon the competency of the statement the trial judge was authorized to use his discretion as to whether the statement had been made voluntarily or not. Certainly it cannot be said that this finding is not supported by substantial and con-

vincing evidence. The State's witnesses not only testified on their direct examination that the petitioner was not threatened or abused, but after the petitioner had testified that he was beaten and abused by each person present the officers were again put upon the stand and all denied the petitioner's testimony. It should be concluded, therefore, that the petitioner was not denied a fair and impartial trial because his statement was admitted into evidence since there was substantial testimony proving that the admission was voluntary.

2. A confession or admission is not involuntary when physical abuse has no causal relation to the confession or when such abuse is subsequent in point of time thereto.

Conceding for the sake of argument that the petitioner was slapped by the deputy sheriff Wilkinson, it is contended that there was no causal relation between the slapping and the statement made by petitioner. It is further contended that the record shows that this mistreatment occurred after the statement was made.

B. F. Craven testified that the slapping took place at least thirty minutes after the statement was made. Zack Morris, however, testified that it was made at about the same time the admission was completed. Other witnesses testified that no slapping occurred. It is not clear, therefore, from the record whether there was any slapping at all, but

if there was, the testimony shows that it was after the statement.

The record further indicates that the slap was administered, not to procure a statement from the petitioner but because he was impudent. (R. 14,) and because he "kept talking back" to Mr. Wilkinson. (R. 18.)

Since all of the State's witnesses testified that there were no threats to, or abuse of the petitioner in connection with the confession the only conclusion is that the slap was administered for a reason other than to induce the petitioner to make a statement and that it was administered subsequent to the statement. This being the case, it cannot be said that the admission was involuntary.

In *Beckham v. State*, 100 Ala. 15, 14 So. 859, 860, in speaking of confessions, the court said:

> "Its exclusion rests on its connection with the inducement; they stand to each other in the relation of cause and effect. If it is apparent that no such connection exists, there is no reason for the exclusion of the evidence."

See also:

Reedy v. State, 246 Ala. 363, 20 So. 2d. 528, 532.

Further cases upon this proposition are collected in 24 *A. L. R.*, page 712, the general rule being

that where an assault is committed upon a prisoner for reasons other than eliciting a confession, the assault does not necessarily show that the statement made was involuntary and hence inadmissible. On the contrary, an explanation of the reason for the assault may show that it had no connection with the petitioner's incriminating statement and that the statement was therefore voluntary. See *Connors v. State*, 95 Wis. 77, 69 N. W. 981; *Thomas v. State*, 58 Fla. 122, 51 So. 410; *Andrews v. People*, 33 Colo. 193, 108 Am. St. Rep. 76, 79 Pac. 1031.

It is submitted, therefore, that even if the petitioner was slapped the same occurred because he was impudent and because he "talked back to" a deputy sheriff.

In arguing this proposition we do not indorse the action of the sheriff, nor advocate the slapping of prisoners. Such action is, of course, reprehensible, but if it has no connection with a statement later used in evidence and is not the inducement for the statement it cannot be said that this independent assault, having no connection and being unrelated to the statement, deprived the petitioner of a fair trial.

It is needless to point out to this Court that if this alleged assault upon the petitioner took place subsequent to the statement the assault would have no bearing upon the voluntary character of the statement, there being no causal connection. *Beckham*

v. State, 100 Ala. 15, 14 So. 859; *Reedy v. State*, 246 Ala. 363, 20 So. 2d. 528. See also *Lind v. State*, 137 Ark. 92, 207 S. W. 47; *Bell v. State*, 177 Ark. 1034, 9 S. W. 2d. 238.

3. When an admission is not the sole or even the principal evidence in the case, and there is a satisfactory showing that the admission was voluntary, the determination of the triers of fact should be sustained, unless such determination is so lacking in support in the evidence that to give it effect would work that fundamental unfairness which is at war with due process.

We have attempted to demonstrate to the court that the trial court in Alabama admitted the confession into evidence under established rules of Alabama procedure, and that the voluntary character of the statement was supported by substantial evidence; and further that the weight and credibility of the statement was a question for the jury under Alabama law. That the statement was properly introduced in evidence and submitted to the jury was affirmed by the decision of the Alabama Court of Appeals (see opinion of the Court of Appeals, R. 32, 33). The Supreme Court of the United States, however, does not make its decision upon the law of evidence in Alabama, but determines for itself whether or not the use of a confession by the State amounts to an unfair trial.

Under the decisions of this Court in the case of *Brown v. Mississippi*, 297 U. S. 278, 56 S. Ct. 461,

80 L. Ed. 682, *Chambers v. Florida*, 309 U. S. 227, 60 S. Ct. 472, 84 L. Ed. 716; *Ward v. Texas*, 316 U. S. 547, 86 L. Ed. 1663, the following rule may be stated. Where a conviction rests solely or principally upon a confession and where it appears without conflict that such confession was obtained by any means amounting to compulsion, the rights of the individual convicted by the use of such confession, under the due process clause of the Fourteenth Amendment to the United States Constitution have been violated and the Supreme Court of the United States will in an appropriate proceeding, brought for that purpose, set aside such conviction and any judgment resulting therefrom.

Plainly the facts in this case do not call for the operation of this rule. In the first place, there was never a confession of guilt. There was a statement which may, perhaps, be called an admission of certain facts connecting the petitioner with the crime. In the second place, the evidence is in conflict as to whether or not any threats at all were used to obtain this statement. In the third place, the statement was not the sole evidence in the case and it may safely be said that it was not the principal evidence in the case against the petitioner. Testimony as to the contents of the statement consistently showed that he denied his guilt. The State of Alabama proved its case by evidence other than the statement of the petitioner. His statement, whether voluntary or involuntary, added little to the State's case. The petitioner, when he took the witness stand, testified

to substantially the same facts contained in his statement.

This Court, therefore, is confronted with a far different state of facts than those shown in the cases enumerated above. The rule that should be applied in this case is stated in *Lisbenda v. California*, 314 U. S. 219, 86 L. Ed. 166. In that case the evidence was also conflicting as to whether threats and abuse procured the confession. In that case it was admitted that an officer slapped the petitioner's face when the petitioner had made an offensive remark about his wife. In that case this Court said:

> "There are cases, such as this one, where the evidence as to the methods employed to obtain a confession is conflicting and in which, although denial of due process was not an issue in the trial, an issue has been resolved by court and jury which involves an answer to the due process question. In such a case we accept the determination of the triers of fact, unless it is so lacking in support in the evidence that to give it effect would work that fundamental unfairness which is at war with due process.
>
> "Here judge and jury passed on the question whether the petioner's confessions were freely and voluntarily made, and the tests applied in answering that question rendered the decision one that also answered the question whether the use of the confessions involved a

denial of due process; this notwithstanding the issue submitted was not *eo nomine* one concerning due process. Furthermore, in passing on the petitioner's claim the Supreme Court of the state found no violation of the Fourteenth Amendment. Our duty then is to determine whether the evidence requires that we set aside the finding of two courts and a jury and adjudge the admission of the confessions so fundamentally unfair, so contrary to the common concept of ordered liberty as to amount to a taking of life without due process of law.

"In view of the conflicting testimony, we are unable to say that the finding below was erroneous so far as concerns the petitioner's claims of physical violence, threats, or implied promises of leniency. . . . . ."

We believe that the decision in *Lisbenda v. California*, supra, should be followed in this case rather than those cases reviewed at the outset of this argument. The rule above quoted would require this Court to deny the petition for writ of certiorari.

It is submitted, therefore, that the writ should be denied.

Respectfully submitted,

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CERTIFICATE

I hereby certify that I have forwarded a copy of the foregoing brief to Hon. John C. Walters, Troy, Alabama, attorney for petitioner on this the ..... day of January, 1946.

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